

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Clark County, NV
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

County of Residence of First Listed Defendant Dane County, WI

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (firm Name, Address, and Telephone Number)

Chad A. Bowers, Esq., Chad A. Bowers, LTD., 3202 W. Charleston Blvd., Las Vegas, NV 89102

Attorneys (if Known)

Nelson L. Cohen, Esq., Paul A. Acker, Esq., Bremer, Whyte, Brown & O'Meara, LLP.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question
(U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF

DEF

Incorporated or Principal Place of Business In This State

PTF

DEF

Citizen of Another State

PTF

DEF

Incorporated and Principal Place of Business in Another State

PTF

DEF

Citizen or Subject of a Foreign Country

PTF

DEF

Foreign Nation

PTF

DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT

TORTS

FORFEITURE/PENALTY

BANKRUPTCY

OTHER STATUTES

110 Insurance

PERSONAL INJURY

310 Airplane
 315 Airplane Product Liability
 320 Assault, Libel & Slander
 330 Federal Employers' Liability
 340 Marine
 345 Marine Product Liability
 350 Motor Vehicle
 355 Motor Vehicle Product Liability
 360 Other Personal Injury

PERSONAL PROPERTY

362 Personal Injury - Med. Malpractice
 365 Personal Injury - Product Liability
 368 Asbestos Personal Injury Product Liability

PROPERTY

370 Other Fraud
 371 Truth in Lending
 380 Other Personal Property Damage

IMMIGRATION

385 Property Damage
 390 Other Product Liability
 411 Voting
 442 Employment
 443 Housing Accommodations
 444 Welfare
 445 Amer. w/ Disabilities - Employment
 446 Amer. w/ Disabilities - Other
 449 Other Civil Rights

SOCIAL SECURITY

410 Agriculture
 420 Other Food & Drug
 425 Drug Related Seizure of Property 21 USC 881

LABOR

430 Liquor Laws
 440 R.R. & Truck
 450 Airline Regs
 460 Occupational Safety Health

FEDERAL TAX SUITS

470 Racketeer Influenced and Corrupt Organizations
 480 Consumer Credit
 490 Cable Sat TV
 500 Selective Service

STATE TAX SUITS

495 State Reapportionment
 500 Amnistrust
 510 Banks and Banking
 520 Commerce

DEBTORS

530 General
 535 Death Penalty
 540 Mandamus & Other
 550 Civil Rights
 555 Prison Condition

CIVIL RIGHTS

560 Other Civil Rights

CIVIL RIGHTS

565 Other Immigration Actions

V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1441(a); 28 U.S.C. Sec. 1332(a)(1)

VI. CAUSE OF ACTION

Brief description of cause:

Breach of Contract, Breach of Duty of Good Faith and Fair Dealing

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

2/26/10

SIGNATURE OF ATTORNEY OR RECORD

Met. Ceter

FOR OFFICE USE ONLY

RF-CCP1 #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

1 NOTC
2 NELSON L. COHEN, ESQ.
3 Nevada State Bar No. 7657
4 PAUL A. ACKER, ESQ.
5 Nevada State Bar No. 3670
6 BREMER WHYTE BROWN & O'MEARA LLP
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8 SUITE 225
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11 FACSIMILE: (702) 258-6662
12 ncohen@bremerandwhyte.com
13 packer@bremerandwhyte.com

14 Attorneys for Defendant,
15 AMERICAN FAMILY INSURANCE GROUP

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 GIOVANNI MAMONE,,) Case No. 09A604054
19 Plaintiff,)) Dept No.: III
20 vs.)) **AMERICAN FAMILY'S NOTICE OF**
21 AMERICAN FAMILY MUTUAL)) **REMOVAL TO FEDERAL DISTRICT**
22 INSURANCE, a foreign Corporation, and DOES)) **COURT**
23 I-X II-X, inclusive,,))
24 Defendants.))

25 **COMES NOW**, AMERICAN FAMILY MUTUAL INSURANCE COMPANY, a
26 Wisconsin Corporation, by and through its counsel of record, BREMER, WHYTE, BROWN &
27 O'MEARA, LLP., and submits this Notice of Removal to the United States District Court for the
28 District of Nevada.

29 PLEASE TAKE NOTICE that AMERICAN FAMILY MUTUAL INSURANCE
30 COMPANY, a Wisconsin Corporation, hereby removes the state action entitled "Giovanni
31 Mamone v. American Family Insurance Group, and/or DOES I-X" filed in the Eighth Judicial
32 District Court for the State of Nevada in and for the County of Clark to this Court. The grounds for
33 removal are as follows:

34 1. Removal is appropriate pursuant to 28 U.S.C. 1441(a) because this Court has
35 original jurisdiction over the case founded upon diversity of citizenship pursuant to 28 U.S.C.

1 1332(a)(1). Pursuant to the claims set forth in Plaintiff's Complaint, the matters in controversy will
 2 allegedly exceed \$75,000 based on Plaintiff's alleged damages, exclusive of interest and costs, and
 3 Complete diversity exists between Plaintiff GIOVANNI MAMONE and Defendant AMERICAN
 4 FAMILY MUTUAL INSURANCE COMPANY as follows:

- 5 a. Upon information and belief, Plaintiff is a citizen of the State of Nevada.
- 6 b. Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY is
 a citizen of the State of Wisconsin as it is incorporated in Wisconsin and has
 its principal place of business in Wisconsin.

9 2. Pursuant to 28 U.S.C. 1446(a), AMERICAN FAMILY MUTUAL INSURANCE
 10 COMPANY, provides this Court with copies of the following documents:

- 11 a. Civil Complaint, attached hereto collectively as Exhibit "1";
- 12 b. Affidavit of Service on AMERICAN FAMILY, attached hereto collectively
 as Exhibit "2";
- 13 c. AMERICAN FAMILY'S Notice of Removal of Action attached hereto as
 Exhibit "3".

14 3. A copy of this Notice is being filed concurrently with the clerk of the Clark County
 15 District Court and served on Plaintiff's counsel.

16 Dated: February 26, 2010.

BREMER WHYTE BROWN & O'MEARA LLP

20 By: /s/Paul A. Acker

21 Nelson L. Cohen, Esq.
 22 Nevada Bar No. 7657
 23 Paul A. Acker, Esq.
 24 Nevada Bar No. 3670
 25 Attorneys for Defendant
 26 AMERICAN FAMILY INSURANCE

EXHIBIT 1

EXHIBIT 1

ORIGINAL

1 COMP
 2 CHAD A. BOWERS, ESQ.
 2 Nevada Bar #: 007283
 3 CHAD A. BOWERS, LTD.
 3 3202 West Charleston Blvd.
 Las Vegas, Nevada 89102
 4 (702) 457-1001
 (702) 457-8006
 5 Attorney for Plaintiff

FILED

NOV 20 2009

CLERK OF COURT

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 GIOVANNI MAMONE,)
 9 Plaintiff,)
 vs.)
 10 AMERICAN FAMILY MUTUAL INSURANCE)
 11 foreign Corporation, and DOES I-X)
 and ROE CORPORATIONS)
 12 III-X, inclusive,)
 13 Defendants.)
 14

Case No. : A-09-604054-C
 Dept No. : III

COMPLAINT

A-09-604054-C
 53688815 COMPLAINT

16 Plaintiff, GIOVANNI MAMONE, by and through his attorney
 17 of record, CHAD A. BOWERS, Esq., for his cause of action against
 18 the Defendants, and each of them, alleges as follows:
 19

20 FIRST CAUSE OF ACTION
 (BREACH OF CONTRACT)

21 I.

22 That at all times herein mentioned, Plaintiff, GIOVANNI
 23 MAMONE, was and is a resident of the City of Las Vegas, County of
 Clark, State of Nevada.
 24

25 II.

26 That at all times mentioned herein, Defendant, AMERICAN
 27 FAMILY MUTUAL INSURANCE, (hereinafter "AMERICAN FAMILY") was and
 28 is Wisconsin corporation, active, in good standing, and

CLERK OF COURT

RECEIVED

1 authorized to do the business of property and casualty insurance
2 in the state of Nevada since June 14, 1999.

3 III.

4 Plaintiff is unaware of the true names and legal capacities,
5 whether individual, corporate, associate, or otherwise, of the
6 Defendants sued herein as DOES I-X, and ROE CORPORATIONS, I-X,
7 inclusive, and therefore sue said Defendants by such fictitious
8 names. Plaintiff, an individual, prays leave to insert said
9 Defendants' true names and legal capacities when ascertained.
10 Plaintiff, an individual, is informed and believes, and thereon
11 alleges, that each of the Defendants designated herein as a DOE
12 and ROE are in some way legally responsible and liable for the
13 events referred to herein, and proximately caused the damages
14 alleged herein.

15
16 IV.

17 That at all times mentioned herein, Defendants, and each of
18 them, were agents and employees of each of the remaining Defendant
19 and were, at all times, acting within the purpose and scope of
20 that agency and employment.

21
22 V.

23 That on or about May 6, 2006, the Plaintiff was involved in
24 an automobile accident, which loss occurred at or near Charleston
and Town Center, Las Vegas, County of Clark, State of Nevada.

25
26 VI.

27 That on that date, the Plaintiff was a passenger in a
28 vehicle driven by **MIRIAM AIELLO**, who was in a collision with a
vehicle driven by **MARK SANMAN**. The collision caused the injuries

1 and damages suffered by the Plaintiff. These injuries included
2 but were not limited to his head, neck, back, bodily limbs,
3 organs and systems all or some of which conditions may be
4 permanent and disabling in nature.

VII

6 That at the time of this loss, the owner and driver of the
7 vehicle responsible for the collision, **MARK SANMAN**, was not
8 adequately insured to cover Plaintiff's entire loss. **MARK SANMAN**
9 tendered his full policy limits to Plaintiff in the amount of
10 \$15,000.00 for his injuries.

VIII

12 Plaintiff is informed and believes that the adverse party
13 was, in fact, underinsured thus activating the underinsured
14 motorist benefits due and owing to the Plaintiff as well as any
15 and all other benefits contracted for and paid for separately.

IX

17 That Plaintiff made claim through his "underinsurance
18 carrier", Defendant **AMERICAN FAMILY**, as he was, at the time of
19 this loss, covered under a policy of insurance at policy number
20 1784-9926-01-09-FPPA-NV on one (1) automobile , providing
21 uninsured / underinsured motorist benefits of \$50,000.00.

x

23 The coverages provided were to compensate and make Plaintiff
24 whole for his loss suffered.

xi

26 That the Plaintiff is an "insured" and is entitled to
27 benefits from the uninsured/underinsurance available on the
28 policies of insurance issued to **MIRIAM AIELLO**.

1 XII.

2 That the Plaintiff did, during the course of his care , make
3 demand for resolution of the underinsurance portion of this claim
4 to his carrier, the Defendant **AMERICAN FAMILY** and forwarded any
5 and all required applications, authorizations and materials
6 necessary to perfect this claim with the Defendant **AMERICAN**
7 **FAMILY**.

8 XIII.

9 That when the Plaintiff made demand for resolution of this
10 claim through the Defendant, the Defendant denied benefits
11 demanded including:

12 (a) Denial of full of benefits of her uninsured
13 motorist benefits.

14 XIV.

15 That Defendant has acknowledged that coverage for
16 underinsurance which is available and was in effect at the time
17 of the loss is refusing tender of full benefits, and requiring
18 deduction or offset for all sums paid pursuant to any other
19 benefits available and paid to the Plaintiff.

20

21 XV.

22 The Plaintiff alleges that the Defendant is not entitled to
23 any deduction or offset for benefits against underinsurance for
24 any reason and that they are responsible for full benefits
25 contracted for by Plaintiff and contemplated by law and statute
26 including the requirements of "stacking" as hereinabove
27 mentioned.

28 ///

1 XVI.

2 That Plaintiff has made a demand for payment of benefits for
3 which he paid a separate premium for separate and distinct
4 statutory coverage available and contracted for without reduction
5 for benefits that may or may not have been available to Plaintiff
6 at the time of this loss.

7 XVII.

8 That following Plaintiff's injuries and notification of the
9 accident to the Defendant, the company's duties have been
10 activated. Specifically their duty to fully compensate the
11 Plaintiff on the contracts available in effect at the time of the
12 loss to perfect and provide benefits paid for by the Plaintiff
13 through the coverage available.

14 XVIII.

15 That the Defendant in contravention of that intended
16 purpose, has failed and refused and continues to fail and refuse
17 to provide full benefits available to the Plaintiff while
18 Plaintiff still remains obligated to pay full premiums for such
19 coverages stated to the Defendant, **AMERICAN FAMILY**.

20 XI.

21 That Defendant's actions constitute a breach of the
22 insurance contract upon which Plaintiff has relied.

23 XIII.

24 Plaintiff alleges that the Defendant acted intentionally and
25 willfully to deprive the Plaintiff of that to which the Plaintiff
26 is entitled and did so with disregard to the rights of the
27 Plaintiff in violation of statute and case precedent entitling
28 the Plaintiff to exemplary damages.

1

XIX.

2
3 That as a result of Defendant's breach of contract,
4 Plaintiff has been damaged and continues to be damaged in a sum
5 in excess of \$10,000.00.

6

SECOND CAUSE OF ACTION
(BAD FAITH)

7

8

I.

9 Plaintiff, **GIOVANNI MAMONE**, incorporates Paragraphs I
10 through XIX of the First Cause of Action herein as though said
11 paragraphs were fully set forth at this point herein.

12

II.

13 An implied covenant and a condition of the contract was that
14 upon the insured's involvement in a motor vehicle collision and
15 subsequent authentication and notification to the Defendant,
16 Plaintiff would be compensated to the full extent of all contract
17 coverages pursuant to the policy of insurance as called for in
18 the terms and conditions of the contract and pursuant to State
19 Statute, Regulation, and case precedent.

20

21

III.

22 That the Defendant, **AMERICAN FAMILY**, acted and negotiated
23 with the Plaintiff in bad faith by its refusal to fully
24 compensate the Plaintiff and provide all benefits available
25 without deduction as they were each paid for separately, separate
26 premiums having been tendered for separate benefits, underinsured
27 motorist coverage included.

28

///

1 || IV

2 That these actions constitute a breach of the Covenant of
3 Good Faith and Fair Dealing on a first party basis by the
4 Defendant, **AMERICAN FAMILY**. They are demonstrated by its refusal
5 to compensate the Plaintiff fully despite the knowledge, facts
6 and circumstances, to the detriment of the policyholder and by
7 taking a position adverse to their own policyholder as an
8 individual covered or person covered under the policy.

9 | Page

10 That the Plaintiff is entitled to settlement and coverage
11 from all policies of insurance available and all aspects of
12 coverage available on all vehicles insured and all aspects of
13 coverage without limitation, including stacking of benefits, and
14 uninsured and underinsurance benefits without deduction available
15 in each contract of insurance at the time of the loss without
16 deduction or offset of benefits.

17 VI

18 By refusing to tender these coverages, the Defendant caused
19 the Plaintiff to suffer damages under the terms of the policy
20 including but not limited to interest on those damages, anxiety,
21 worry, mental, emotional distress and other incidental damages in
22 the sum in excess of \$10,000.00.

23 | VII

24 That as a result of the action and activities of the
25 Defendant, **AMERICAN FAMILY**, Plaintiff is entitled to punitive
26 damages in the sum appropriate to set an example of the
27 Defendant, **AMERICAN FAMILY**, but in any case, in a sum in excess
28 of \$10,000.00 as the actions and activities of the Defendant

1 constitute oppression, malice and a deliberate intent to preclude
2 that to which the Plaintiff is entitled and contracted for by way
3 of benefits.

4

5 **WHEREFORE**, Plaintiff, expressly reserving his right to
6 amend his Complaint prior to or at the time of trial of this
7 action to insert those items of damage not yet fully
8 ascertainable, prays judgment as follows:

9

FIRST CAUSE OF ACTION

10 1. For general damages sustained by Plaintiff, **GIOVANNI**
11 **MAMONE** , in an amount in excess of \$10,000.00;
12 2. For punitive damages in an amount in excess of
13 \$10,000.00;
14 3. For cost of suit and attorney's fees incurred herein;
15 4. For such other and further relief as the Court may deem
16 just and proper in the premises.

17

18 ///

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SECOND CAUSE OF ACTION

1. For general damages sustained by Plaintiff, **GIOVANNI MAMONE**, in an amount in excess of \$10,000.00;
2. For punitive damages in an amount in excess of \$10,000.00;
3. For costs of suit and attorney's fees incurred herein;
4. For such other and further relief as the Court may deem just and proper in the premises.

10 DATED this 20th day of November 2009

CHAD A. BOWERS, LTD

CHAD A. BOWERS, ESQ.
Nevada Bar No. : 7283
3202 W. Charleston Blvd.
Las Vegas, Nevada 89102
Attorney for Plaintiff

EXHIBIT 2

EXHIBIT 2

CERTIFICATE OF FACSIMILE & MAILING

The undersigned hereby certifies that on the 26th day of February, 2010, I served a copy of the foregoing **DEFENDANT AMERICAN FAMILY MUTUAL INSURANCE COMPANY'S NOTICE OF REMOVAL OF ACTION TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA** by transmitting via facsimile to the below facsimile number and by causing a copy of the same to be duly deposited in the United States mail, postage prepaid, addressed to:

8 Chad A. Bowers, Esq.
CHAD A. BOWERS, LTD.
9 3202 West Charleston Blvd.
Las Vegas, NV 89102

Attorney for Plaintiff

Executed on February 26, 2010, at Las Vegas, Nevada.

12 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
13 is true and correct.

14 Amree Stellabotte
15 (Type or print name)

/s/Amree Stellabotte
(Signature)

EXHIBIT 3

EXHIBIT 3

1 RMFC
2 NELSON L. COHEN, ESQ.
3 Nevada State Bar No. 7657
4 PAUL A. ACKER, ESQ.
5 Nevada State Bar No. 3670
6 BREMER WHYTE BROWN & O'MEARA LLP
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12 ncohen@bremerandwhyte.com
13 packer@bremerandwhyte.com
14
15 Attorneys for Defendant,
16 AMERICAN FAMILY INSURANCE GROUP

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